



August 8, 2012

DATE

APPROVED BY *Joyce E. Dudley*, DISTRICT ATTORNEY

Joyce Dudley, District Attorney

CONTACT PERSON (805) 568-2300

August 8, 2012

* * * * * O P E D * * * * *

Mandated Reporters of Child/Elder Abuse or Neglect

by Joyce E. Dudley, District Attorney
and Mag Nicola, Senior Deputy District Attorney

Our office recently filed criminal charges against two school administrators who we alleged failed to fulfill their legal duties to report child sex abuse to law enforcement. The case, which is now in court, involves two high-school girls who allegedly were sexually assaulted by fellow students. We recognize that this case may raise questions in some people's minds as to who is obligated to report such abuse, and under what circumstances.

Vulnerable victims are often victimized because they are vulnerable to repeated acts of assault, abuse or neglect. Many times victims, in general, but more often vulnerable victims are reluctant to tell the police what happened due to fear, trauma, embarrassment, or even guilt. But many will provide clues or details of their victimization to someone outside of law enforcement. Vulnerable victims often choose someone who is not a parent, guardian, or relative with whom to share their experience. And it's not unusual for such victims to ask the people they confide in never to tell anyone.

In some cases, the victim's request for secrecy must be denied because California law designates "mandatory reporters." Mandatory reporters are individuals who are legally obligated to report suspected cases of abuse, assault or neglect to law enforcement. If the receiver of the information is a mandatory reporter and the information s/he receives meets the criteria below, then s/he faces criminal penalties by failing to contact law enforcement immediately and make a report. The reason for this is to protect the present and potential vulnerable victim and to discourage individuals who are not adequately trained in the investigation of such matters from assuming a role they are ill-equipped to handle.

So who is a mandatory reporter? The list is lengthy and includes a wide variety of positions in education, youth recreation, child services, public services, counseling and the clergy. Some examples include teachers and instructors, in both public and private schools; librarians; bus drivers; youth counselors; day-care workers; social workers; probation officers; law enforcement officers; firefighters; doctors; nurses and other medical personnel; alcohol and drug counselors; priests, ministers and rabbis (except information gained during "penitential communication"). (Penal Code section 11165.7(a).)

These are just examples. The entire list is available on our website: <http://www.countyofsb.org/da>. The next question is what must be reported? Generally, the acts that must be reported fall under the headings of neglect, harm/endangerment, unlawful corporal punishment and sexual abuse/assault/exploitation.

Neglect means anything involving the intentional or negligent failure to provide adequate food, clothing, shelter or medical care for a child.

Harm/Endangerment includes any willful harm or injury inflicted upon a child, or conduct that endangers the child.

Unlawful Corporal Punishment involves cruel and inhuman physical punishment resulting in a traumatic condition; i.e., bruising, scarring, burns, welts, etc.

Sexual Abuse, Sexual Assault, Sexual Exploitation includes any touching of the intimate parts of the child, or by the child of the perpetrator, if done for sexual arousal.

People who are mandated reporters sometimes worry about what will happen if they are wrong and it turns out the person wasn't abused or neglected. In those cases, there is no penalty for a mandated reporter when s/he follows the legal obligation to report. As an incentive to encourage the mandated reporter to follow the law, the reporter is given absolute immunity from civil or criminal liability from making the required report, s/he is entitled to confidentiality, and is protected from retaliation or discipline by his or her employer for making the required report.

Sometimes confusion arises when the child, his/her parents or the mandatory reporter's boss says that they will make the report. It's important to know that that does not eliminate the obligation of the mandatory reporter to also report. In short, this obligation cannot be delegated.

All employers of mandated reporters must provide their employees with copies of the relevant reporting laws, as well as an explanation of their reporting obligations, and the criminal penalties for failing to report. Any person who requires a license or certificate to practice a profession or occupation defined as a mandated reporter should also receive similar notification.

The Elder Abuse and Dependent Adult Reporting and Civil Protection Act mirrors the above obligations of, and protections afforded to, the mandated reporters who report suspected abuse, neglect or abandonment of this vulnerable victim class.

The overall goal of our mandated reporting laws is to channel information regarding suspected assaultive, abusive, or neglectful conduct to those agencies that are both trained and adequately equipped to conduct the necessary investigations. The swift reporting and investigation of such alleged conduct is essential in preventing future victimization as well as identifying those reports that are unfounded.

* * * * *

OFFICE OF THE
DISTRICT ATTORNEY
COUNTY OF SANTA BARBARA

JOYCE E. DUDLEY
District Attorney



J. GORDON AUCHINCLOSS
Chief Deputy District Attorney
STEPHEN P. FOLEY
Chief Deputy District Attorney
KIMBRA MCCARTHY
Administrative Director

HILARY M. DOZER
Chief Deputy District Attorney
KELLY D. SCOTT
Chief Deputy District Attorney
DAVID M. SAUNDERS
Chief Investigator

Who is a Mandatory Reporter of Child/Elder Abuse or Neglect?

Education

- Teacher, Instructional Aide, Teacher's Aide/Assistant from both public and private schools.
- Classified Employee of any public school; these are employees who are not certified (e.g., library aides, custodians, bus drivers).
- Supervisor of child welfare, or certificated pupil personnel employee from both public and private schools.
- Employee of a county office of education or the State Department of Education, whose duties bring the employee into contact with children on a regular basis.
- An employee of a school district police or security department.
- Any person who is an administrator or presenter of, or a counselor in, a child abuse prevention program in any public or private school.

Youth Recreation

- Administrator at a public or private day camp.
- Administrator or employee of a public or private youth center, youth recreation program, or youth organization.

Child Services

- Licensee, an administrator, or an employee of a licensed community care or child day care facility.
- Head Start program teacher.
- Licensing worker or licensing evaluator employed by an agency responsible for licensing child care facilities.
- Employee of a child care institution, including, but not limited to, foster parents, group home personnel, and personnel of residential care facilities.
- Employee or Volunteer of Court Appointed Special Advocate program.
- Child Visitation Monitor.
- Any person providing services to a minor child under §12300 of the Welfare and Institutions Code.

☐ SANTA BARBARA OFFICE
1112 Santa Barbara Street
Santa Barbara, CA 93101
(805) 568-2300
Fax (805) 568-2453

☐ SANTA MARIA OFFICE
312-D East Cook Street
Santa Maria, CA 93454
(805) 346-7540
Fax (805) 346-7588

☐ LOMPOC OFFICE
115 Civic Center Plaza
Lompoc, CA 93436
(805) 737-7760
Fax (805) 737-7732

Public Services

- Social worker, probation officer, or parole officer.
- Administrator or Employee of a public or private organization whose duties require direct contact and supervision of children.
- Any employee of any police department, county sheriff's department, county probation department, or county welfare department.
- Custodial officer.
- Public assistance worker.
- Animal control officer, including any person employed by a city, county, or city and county, for the purpose of enforcing animal control laws or regulations.
- Humane society officer, including any person appointed or employed by a public or private entity as a humane officer.
- Peace Officer.
- District Attorney investigator, inspector, or local, child support agency caseworker.
Does not apply when this person is working to represent a minor.

Healthcare

- Firefighter, except for volunteer firefighters.
- Physician and surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, optometrist, marriage and family therapist, clinical social worker, professional clinical counselor.
- Emergency medical technician I or II, paramedic, or other certified registered psychological assistant.
- Marriage and family therapist trainee / Unlicensed marriage and family therapist intern.
- State or county public health employee who treats a minor for venereal disease or any other condition.
- Coroner.
- Medical examiner or any other person who performs autopsies.

Film Processing

- Commercial Film and Photographic Print Processors must report any images depicting a child under the age of 16 engaged in an act of sexual conduct.

Counseling

- Alcohol and drug counselor, including any person providing counseling, therapy, or other clinical services for a state licensed or certified drug, alcohol, or drug and alcohol treatment program. However, alcohol or drug abuse, or both alcohol and drug abuse, is not in and of itself a sufficient basis for reporting child abuse or neglect.
- Clinical counselor trainee or intern.

Clergy

- Clergy member, including a priest, minister, rabbi, religious practitioner, or similar functionary of a church, temple, or recognized denomination or organization.
- Custodian of records of a clergy member.

Knowledge or reasonable suspicion acquired by clergy *during penitential communication* is excepted. A communication is a Penitential Communication when the clergy member is acting under a vow of confidentiality imposed by a tenet or custom of the religion.